

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHAD IRISH,

Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE KENNETH
BANKER (shield # 282) of the 43rd POLICE PRECINCT,

**DEFENDANTS' LOCAL
CIVIL RULE 56.1
STATEMENT OF
UNDISPUTED FACTS**

Defendants.

09 CV 5568 (RMB) (HBP)

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Defendants the City of New York and Detective Kenneth Banker submit this statement pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern District of New York to set forth the material facts as to which defendants contend there are no genuine issues to be tried.

1. Plaintiff Chad Irish filed the instant action on or about May 21, 2009 in the Supreme Court of the State of New York, County of Bronx by filing a Summons and Complaint. (Declaration of Afsaan Saleem ("Saleem Decl."), Ex. A).
2. On or about June 17, 2009, defendants City of New York and Detective Kenneth Banker ("defendants") filed a Notice of Removal. (Saleem Decl., Ex. B).
3. On or about August 21, 2009, defendants filed their Answer to the Complaint. (Saleem Decl., Ex. C).
4. Defendants incorporated by reference in their Answer, several documents which are annexed to the Answer as Exhibits "A" through "K." (Saleem Decl., Ex. C).

5. Exhibit "I" of the defendants' Answer is a Complaint Follow Up Informational Report¹ from Det. Banker pertaining to events that occurred on December 26, 2005. (Saleem Decl., Ex. C, (Ex. I)).

6. On December 26, 2005, Det. Banker spoke to the complaining victim by phone and she told him that several items of personal property were stolen from her including her cellphone. (Saleem Decl., Ex. C, (Ex. I)).

7. On December 26, 2005, the complaining victim told Det. Banker that she can view photos at the precinct. (Saleem Decl., Ex. C, (Ex. I)).

8. Exhibit "H" of the defendants' Answer is a Complaint Follow Up Informational Report from Det. Banker pertaining to events that occurred on January 2, 2006. (Saleem Decl., Ex. C, (Ex. H)).

9. On December 25, 2005 at 2203 hours the perpetrator of the crime sent a text message to an individual. (Saleem Decl., Ex. C, (Ex. H)).

10. The person who received the message stated that it was from his father who he only knows as "Akeim." (Saleem Decl., Ex. C, (Ex. H)).

11. Det. Banker contacted the mother of the person who received the text message who informed the detective that her son's father is Chad Akeim Irish. (Saleem Decl., Ex. C, (Ex. H)).

12. Exhibit "C" of the defendants' Answer is a Complaint Follow Up Informational Report pertaining to events that occurred on January 2, 2006. (Saleem Decl., Ex. C, (Ex. C)).

¹ Courts routinely acknowledge the business record exception for police records. Griffin v. City of New York, 287 F.Supp.2d 392, 397 (S.D.N.Y. 2003). However, if the Court requires, defendants will set forth the foundation by affidavit.

13. On January 2, 2006, Det. Banker and another detective showed the complaining victim a photo array which contained a picture of the plaintiff. (Saleem Decl., Ex. C, (Ex. C)).

14. The complaining victim stated that the person in picture six was the man who robbed her on December 25, 2005. (Saleem Decl., Ex. C, (Ex. C)).

15. Exhibit "F" of the defendants' Answer is a copy of the Photographic Line-Up which was viewed by Andrea Rivera. (Saleem Decl., Ex. C, (Ex. F)).

16. Andrea Rivera selected plaintiff in photograph six and signed her name to the lineup card. (Saleem Decl., Ex. C, (Ex. F)).

17. The date of the photographic identification was January 2, 2006. (Saleem Decl., Ex. C, (Ex. F)).

18. Exhibit "D" of the defendants' Answer is a Complaint Follow-Up Report from Det. Banker. (Saleem Decl., Ex. C, (Ex. D)).

19. On January 27, 2006 plaintiff was apprehended by two officers from Parkchester Security. (Saleem Decl., Ex. C, (Ex. D)).

20. Exhibit "G" of the defendants' Answer are two copies of the Line-Up Report, Bates Stamped NYC 72 and 73. (Saleem Decl., Ex. C, (Ex. G)).

21. Andrea Rivera recognized the plaintiff in the line-up. (Saleem Decl., Ex. C, (Ex. G)).

22. Andrea Rivera signed the line-up report and indicated that she recognized the plaintiff because "[h]e robbed me in the elevator." (Saleem Decl., Ex. C, (Ex. G)).

23. Exhibit "B" of the defendants' Answer is Criminal Court Complaint signed by the alleged victim of the robbery, Andrea Rivera. (Saleem Decl., Ex. C, (Ex. B)).

24. In the Criminal Court Complaint, Andrea Rivera alleges that the plaintiff removed property from her at knifepoint without her permission. (Saleem Decl., Ex. C, (Ex. B)).

25. The Complaint is dated January 27, 2006. (Saleem Decl., Ex. C, (Ex. B)).

26. Exhibit "J" of the defendants' Answer is a copy of the Grand Jury Indictment. (Saleem Decl., Ex. C, (Ex. J)).

27. The grand jury returned a true bill on several counts of the indictment. (Saleem Decl., Ex. C, (Ex. J)).

Dated: New York, New York
June 30, 2010

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City of New York and
Lieutenant Eugene Whyte
100 Church Street
New York, New York 10007
(212) 788-9580

By:


Afsaan Saleem
Senior Counsel
Special Federal Litigation Division

To: Law Offices of Danielle V. Eaddy
26 Court Street, Suite 1400
Brooklyn, NY 11242.

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**CITY DEFENDANTS' STATEMENT PURSUANT
TO LOCAL RULE 56.1**

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York

Attorney for Defendants

100 Church Street

New York, N.Y. 10007

Of Counsel: Afsaan Saleem

Tel: (212) 788-9580

NYCLIS No.

Due and timely service is hereby admitted.

New York, N.Y., 200.....

....., Esq.

Attorney for